

State of Hawaii
DEPARTMENT OF LAND AND NATURAL RESOURCES
Division of Aquatic Resources
Honolulu, Hawaii 96813

November 16, 2007

Board of Land and Natural Resources
State of Hawaii
Honolulu, Hawaii

REQUEST APPROVAL TO HOLD A PUBLIC HEARING ON A PROPOSED
NEW HAWAII ADMINISTRATIVE RULE CHAPTER 13-60.4,
MILOLI'I SUBSISTENCE FISHING AREA, HAWAI'I

Submitted for your consideration and approval is a request to hold a public hearing to propose a new Hawaii Administrative Rules (HAR), Chapter 13-60.4, Miloli'i Subsistence Fishing Area, Hawai'i.

The proposed new rule chapter would establish the nearshore waters of Miloli'i as designated for subsistence fishing only, identify subzones within this area as a managed subzone (ko'a) and as refuge subzone (pu'uhonua), and prohibit the following activities: use of most nets and net fishing methods; spearing using underwater breathing apparatus; spearing at night; using spears greater than eight feet in length; taking sea urchins between October 1 and May 31; taking, defacing, or possessing sand, rock or other geological features; taking opelu from the Ho'opuloa ko'a with an exception; taking, defacing, or possessing any aquatic life, sand or rock from the Okoe and Kapu'a Bays pu'uhonua with an exception; operating any thrill craft within either the ko'a or the pu'uhonua, or conducting any commercial ocean recreational activity.

The proposed new chapter would also provide for subsistence activities including hand harvest, pole and line and handline fishing; the take of opelu or akule with a valid commercial marine license except from the ko'a and pu'uhonua subzones; the use of thrownets; the use of hoop-style nets to take opelu only; the take of sea urchins from June 1 until September 30; and the use of non-motorized canoes to take opelu only within the Ho'opuloa ko'a.

A special exemption is proposed to allow the non-profit organization that is associated with the stewardship of the subsistence fishing area a limited harvest of aquatic life, consistent with traditional native Hawaiian practices, provided that the non-profit group petitions the board prior to any harvests, and that the board grant limited harvests, provided that this activity be monitored and reported back to the BLNR on the harvest's effect on aquatic life.

The Office of Hawaiian Affairs received both electronic as well as hardcopy versions of the draft rule chapter for review; no comments were received.

RECOMMENDATION:

"That the Board approve the holding of a public hearing for the proposed new HAR, Chapter 13-60.4, Miloli'i Subsistence Fishing Area, Hawai'i."

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Dan Polhemus", written in a cursive style.

DAN POLHEMUS, Administrator
Division of Aquatic Resources

APPROVED FOR SUBMITTAL:

A handwritten signature in black ink, appearing to read "Laura H. Thielen", written in a cursive style.

for LAURA H. THIELEN, Chairperson
Board of Land and Natural Resources

Attached: Chapter 13-60.4 (10/30/07)

"HAWAI`I ADMINISTRATIVE RULES

TITLE 13

DEPARTMENT OF LAND AND NATURAL RESOURCES

SUBTITLE 4

FISHERIES

PART II MARINE FISHERIES MANAGEMENT AREAS

CHAPTER 60.4

MILOLI`I SUBSISTENCE FISHING AREA, HAWAI`I

- §13-60.4-1 Intent and Purpose
- §13-60.4-2 Definitions
- §13-60.4-3 Boundaries
- §13-60.4-4 Special subzones
- §13-60.4-5 Prohibited activities
- §13-60.4-6 Subsistence area activities
- §13-60.4-7 Penalty
- §13-60.4-8 Severability

§13-60.4-1 Intent and purpose. The intent and purpose of this chapter is as described in Section 188-22.7, Hawai`i Revised Statutes, designating the nearshore waters off Miloli`i, Island of Hawai`i, as a subsistence fishing area, to ensure long-term sustainable populations of fish and other marine species, and to encourage the scientific study and understanding of subsistence fishing management.
[Eff] (Auth: HRS §§188-22.6, 188-22.7)
(Imp: HRS §§ 188-22.6, 188-22.7)

§13-60.4-2 Definitions. As used in this chapter unless otherwise provided:

"Akule" means any fish as identified as *Selar crumenophthalmus* or other recognized synonym. This fish is also known as pa`a`a, halalū, hahalalū, and big-eyed scad.

"Aquatic life" is as defined in section 187A-1, Hawai`i Revised Statutes.

"Bag net" means a type of fishing net made into the shape of a pocket or pouch with an open end held open in the water with the aid of a net float line that supports the top edge of the net up towards the ocean surface and parallel to a net lead line that keeps the lower edge of the net down on the ocean bottom. The bag net is usually made of heavy gauge line to make the net very visible and made of small mesh to prevent the fish from passing through the mesh.

"Bag net fishing method" means a technique of fishing where a person or persons engage in the act or attempt to engage in the act of deploying a fence net in the water in such a manner as to completely encircle the aquatic life. The fence net primarily acts like a barrier to hold or concentrate the aquatic life within the net. The mesh is smaller than the target species so as to prevent the smaller aquatic life from swimming through or entangling in the mesh. The aquatic life is then moved into the bag net for removal from the water. The main characteristics of the bag net fishing method are the closed net configuration, the moving net, person or persons do not chase the aquatic life into the net, and most, if not all, of the aquatic life within the net are captured.

"Board" means the board of land and natural resources.

"Commercial activity" means any activity including ocean recreation or the taking of marine life for which compensation of any kind is received by any person for any action, service, or goods that are provided, regardless if the exchange occurs outside or inside the subsistence fishing area.

"Department" means the department of land and natural resources.

"Fish," "fish for," "fishing" means to take, catch, capture, confine, or harvest; including any attempt to take, catch, capture, confine, or harvest; aquatic life. The use of any gear, equipment, tool, or any means to take, capture, confine, or harvest, aquatic life by any person who is in the water, or in a vessel on the water, or on or about the shore where aquatic life may be taken, caught, captured, confined, or harvested, shall be construed as fishing.

"Gill net" is as defined in section 13-75-1.

"Hoop-style net" means a seine type of net used to catch opelu, with an opening created by two or more stiff rods at the top of the net, and when connected forms an oval or circular opening, and tied off at the bottom to prevent opelu from escaping. It is used by first chumming the opelu to create a dense feeding aggregation, then capturing the opelu by lowering the hoop net below the feeding fish, lifting the net, thus surrounding and capturing the fish.

"Lay net" is as defined in section 13-75-1.

"Lay netting" or "lay net fishing method" is as defined in section 13-75-1.

"Opelu" means any fish of the genus *Decapterus*, such as *Decapterus macarellus* or *Decapterus pinnulatus* or other recognized synonyms.

"Sea urchins" means the four sea urchin species identified as wana, *Echinothrix diadema* or *Echinothrix calamaris*, wana hālula, *Diadema paucispinum*, and ha`uke`uke, *Colobocentrotus atratus*, or other recognized synonyms.

"Spear" means any device or implement either hand held, released completely by the user (i.e., a projectile), or attached by a line to another device, which is used to impale marine life by means of a pointed or sharpened tip(s) including but not limited to trigger-style spear guns, arbalettes (arbalete), bow and arrow, Hawaiian slings, or three-prong spears.

"Subsistence" means the customary and traditional native Hawaiian uses of renewable ocean resources for

direct personal or family consumption or sharing, as defined in section 188-22.6 (c)(2), Hawai`i Revised Statutes.

"Surround gill netting" or "surround gill net fishing method" is as defined in section 13-75-1.

"Take" is as defined in section 13-95-1.

"Thrill craft" is as defined in section 200-23, Hawai`i Revised Statutes.

"Underwater breathing apparatus" means any apparatus that provides a person with gas, including air, necessary to breathe underwater, including but not limited to SCUBA, SNUBA, or hookah-style gear.

[Eff] (Auth: HRS §§188-22.6, 188-22.7) (Imp: HRS §188-22.7)

§13-60.4-3 Boundaries. The Miloli`i subsistence fishing area shall be bounded to the north by Makahiki Point (19 degrees 12.182 minutes North latitude; 155 degrees 54.364 minutes West longitude), and to the south by Kāki`o Point (19 degrees 8.079 minutes North latitude; 155 degrees 55.081 minutes West longitude), from the mean high water mark, and seaward from northern and southern reference points to a depth contour of 100 fathoms (182.88 meters) on a compass heading of 270 degrees (West), and is identified in a map located at the end of this chapter, labeled, "Map of the Miloli`i Subsistence Fishing Area, Hawai`i" dated July 2, 2007, and is made a part of this chapter. [Eff] (Auth: HRS §188-22.7) (Imp: HRS §188-22.7)

§13-60.4-4 Special subzones. Within Miloli`i subsistence fishing area as defined in the preceding section, there is established the following special subzones to serve as marine resource managed (ko`a) and refuge (pu`uhonua) areas:

(1) Ho`ōpūloa ko`a, bounded to the north by Ho`ōpūloa sand beach (19 degrees 11.814 minutes North latitude; 155 degrees 54.332 minutes West longitude),

and to the south by Kapukawa`a (19 degrees 11.241 minutes North latitude; 155 degrees 54.500 minutes West longitude), from the shoreline mean high water mark, and seaward to a depth of 100 fathoms (182.88 meters) throughout the area on compass heading of 270 degrees (West) and is identified on a map located at the end of this chapter, labeled, "Map of the Miloli`i Subsistence Fishing Area, Hawai`i" dated July 2, 2007, and is made a part of this chapter; and

(2) Okoe and Kapu`a Bays pu`uhonua, bounded to the north by Hanamalo Point (19 degrees 9.274 minutes North latitude; 155 degrees 54.985 minutes West longitude), and to the south by Kāki`o Point (19 degrees 8.079 minutes North latitude; 155 degrees 55.081 minutes West longitude), from the shoreline mean high water mark, and seaward from northern and southern reference points to a depth of 100 fathoms throughout the area on a compass heading of 270 degrees (West), and is identified in a map located at the end of this chapter, labeled, "Map of the Miloli`i Subsistence Fishing Area, Hawai`i" dated July 2, 2007, and is made a part of this chapter. [Eff]
(Auth: HRS §188-22.7) (Imp: HRS §188-22.7)

§13-60.4-5 Prohibited activities.

(a) Notwithstanding the provisions of chapter 13-60.3, it is unlawful for any person to possess or use the following gear types within the subsistence fishing area, on a vessel or other flotation device that is on or about the water, or to fish or take aquatic life using the following gear types or methods within the Miloli`i subsistence fishing area:

- (1) Use a gill net;
- (2) Use a lay net or use the lay net fishing method;
- (3) Use a surround gill net or use the surround gill net fishing method;
- (4) Use a bag net or use the bag net fishing method;

- (5) Use a spear with underwater breathing apparatus;
- (6) Use a spear after sunset and before sunrise;
- (7) Use any spear over eight feet in length;
- (b) Notwithstanding the provisions of chapter 13-60.3, it is unlawful for any person to:
 - (1) Take sea urchins between October 1 and May 31;
 - (2) Take, alter, deface, damage, destroy, possess, remove any sand, rock, or other geological feature or material.
- (c) Notwithstanding the provisions of section 13-95-18, it is unlawful for any person to:
 - (1) Take opelu within the Ho`öpūloa ko`a, except as provided in subsection 13-60.4-6(a);
 - (2) Take, alter, deface, damage, destroy, possess, or remove any aquatic life, sand, rock, or other geological feature within the Okoe and Kapu`a Bays pu`uhonua, except as provided in subsection 13-60.4-6(b).
- (d) It is unlawful for any person to operate any thrill craft within the Ho`öpūloa ko`a and within the Okoe and Kapu`a Bays pu`uhonua subzones.
- (e) It is unlawful for any person to conduct any commercial activity involving any form of ocean recreation, or involving the take of aquatic life, in the Miloli`i subsistence fishing area, except as provided in section 13-60.4-6. [Eff]
Auth: HRS §188-22.7) (Imp: HRS §188-22.7)

§13-60.4-6 Subsistence area activities. (a) A person may conduct the following activities within the Miloli`i subsistence fishing area including use of any other legal fishing method not prohibited in section 13-60.4-5 including but not limited to hand harvest, pole and line fishing, handline fishing:

§13-60.4-7

- (1) Take akule or opelu except as provided by sections 13-95-18 and 13-95-19, with a valid commercial marine license issued as provided in section 13-74-20, except from the Ho`öpūloa ko`a and the Okoe and Kapu`a Bays pu`uhonua subzones;
- (2) Use a throw net to take aquatic life not otherwise prohibited;
- (3) Use a hoop-style net to take opelu only;
- (4) Take sea urchins between June 1 and September 30;
- (5) Use non-motorized canoes to take opelu only within the Ho`öpūloa ko`a subzone.

(b) A special exemption to a petitioning non-profit organization for limited harvesting of aquatic life from the Okoe and Kapu`a Bays pu`uhonua special subzone consistent with traditional native Hawaiian practices may be permitted by the board provided that the non-profit organization associated with the stewardship of the subsistence fishery area has conformed with all of the requirements outlined in section 188-22.6, Hawai`i Revised Statutes, and provided further that the organization petitions the board at a regularly scheduled meeting, publicly noticed (i.e., compliant with state sunshine law requirements under chapter 92, Hawai`i Revised Statutes), and further that the board may grant exemptions for limited harvest. Such an exemption would be for a duration to be determined by the board, provided that the petitioning organization be required to monitor the aquatic life taken and report back to the board on the effect of the harvesting exemption on the aquatic life populations. [Eff]
 (Auth: HRS §188-22.7) (Imp: HRS §188-22.7)

§13-60.4-7 Penalty. Any person found in violation of the provisions of this chapter shall be

guilty of a petty misdemeanor, may be subject to administrative penalties, and subject to other penalty as provided by law. [Eff _____] (Auth: HRS §§187A-12.5, 187A-13, 188-70) (Imp: HRS §§187A-12.5, 187A-13, 188-70)

§13-60.4-8 Severability. If any provision of this chapter, or the application thereof to any person or circumstances, is held invalid, the remainder of this chapter, or application of the provision to other persons or circumstances, shall not be affected thereby." [Eff _____] (Auth: HRS §§1-23, 188-22.7) (Imp: HRS §§1-23, 188-22.7)

2. Chapter 13-60.4, Hawai'i Administrative Rules, shall take effect ten days after filing with the Office of the Lieutenant Governor.

I certify that the foregoing are copies of the rules, drafted in Ramseyer format pursuant to the requirements of section 91-4.1, Hawai'i Revised Statutes, which were adopted on _____, and filed with the Office of the Lieutenant Governor.

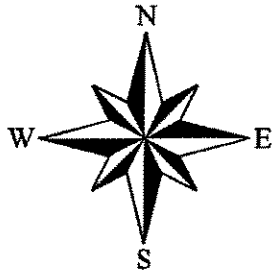
LAURA H. THIELEN, Chairperson
Board of Land and Natural
Resources

APPROVED FOR PUBLIC HEARING:

Deputy Attorney General

Exhibit 1: Map of the Miloli'i Subsistence Fishing Area, Island of Hawai'i 7/2/07

Chapter 13-60.4



Boundary Coordinates		
Landmark	Makai/Seaward*	Mauka/Landward
Makahiki Pt.	19°12.182' N Lat 155°54.617' W Long	19°12.182' N Lat 155°54.364' W Long
Ho'ōpūloa	19°11.814' N Lat 155°54.883' W Long	19°11.814' N Lat 155°54.332' W Long
Kapukawa'a	19°11.241' N Lat 155°55.000' W Long	19°11.241' N Lat 155°54.500' W Long
Hanamalo Pt.	19° 9.274' N Lat 155°55.750' W Long	19° 9.274' N Lat 155°54.985' W Long
Kāki'o Pt.	19° 8.079' N Lat 155°55.750' W Long	19° 8.079' N Lat 155°55.081' W Long

* Makai/Seaward Coordinates = 100 fathom contour

Legend

- Miloli'i Subsistence Fishing Area (SFA)
- Boundary Coordinates (see table above)
- SFA Special Subzones**
 - Ho'ōpūloa Ko'a
 - Okoe and Kapu'a Bays Pu'uhonua
 - Lava Flow Zones
 - Roads
 - Known Ahupua'a Boundaries

Note: No fishing for 'opelu using animal palu ("chop chop") throughout SFA and from Ki'ilāe/Kē'ō'kea to Kapu'a/Kaulanamauna Ahupua'a boundaries (see HAR 13-95-18).

